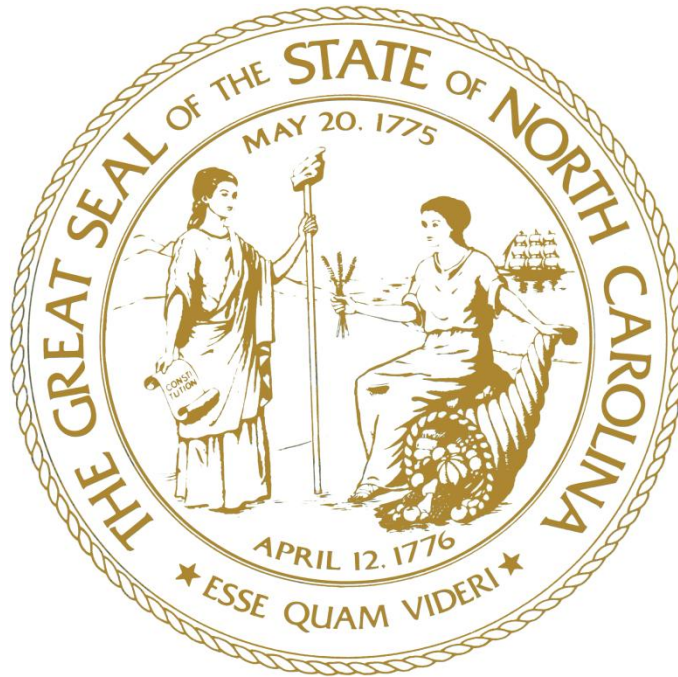
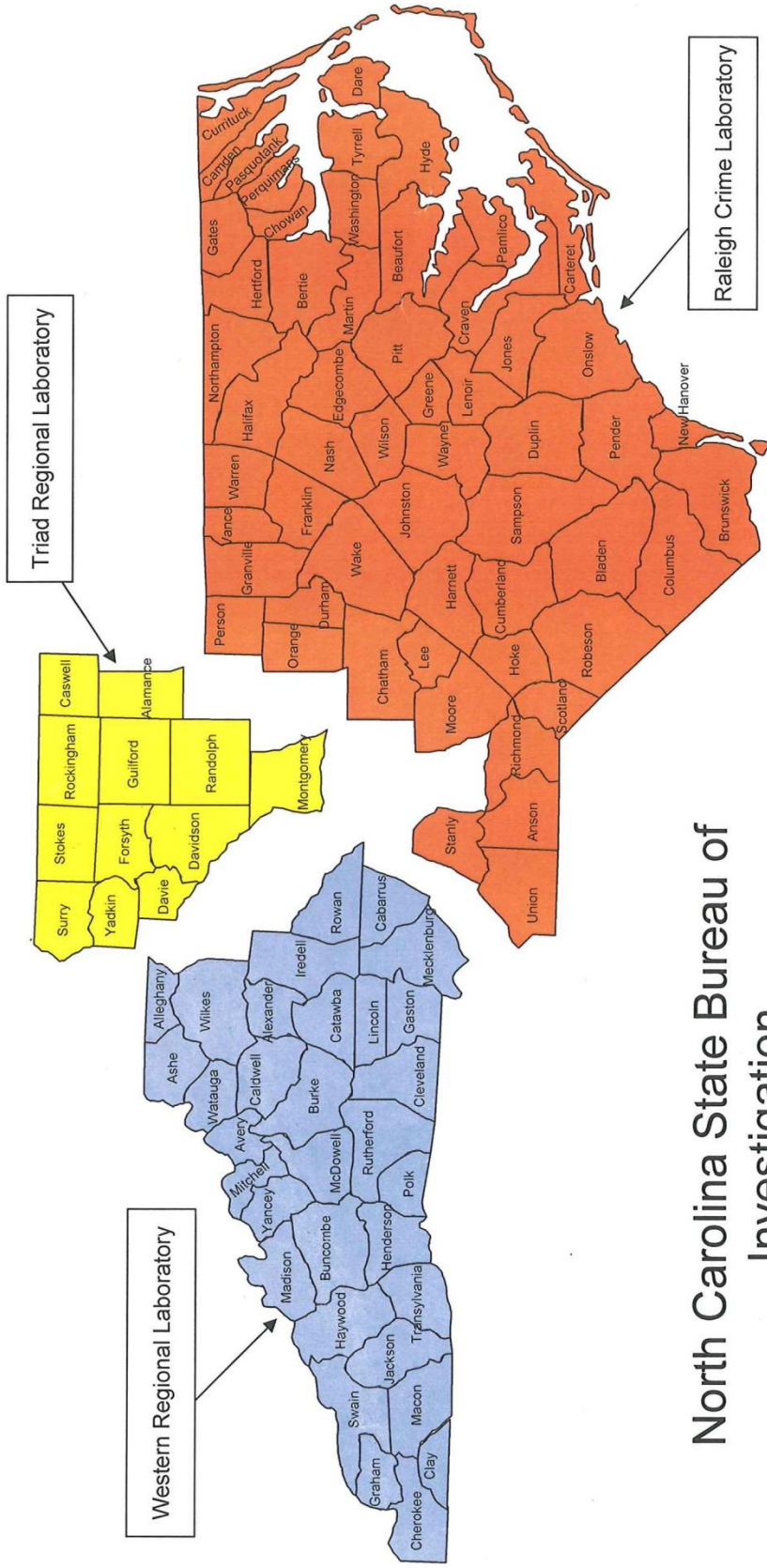


North Carolina State Crime Laboratory



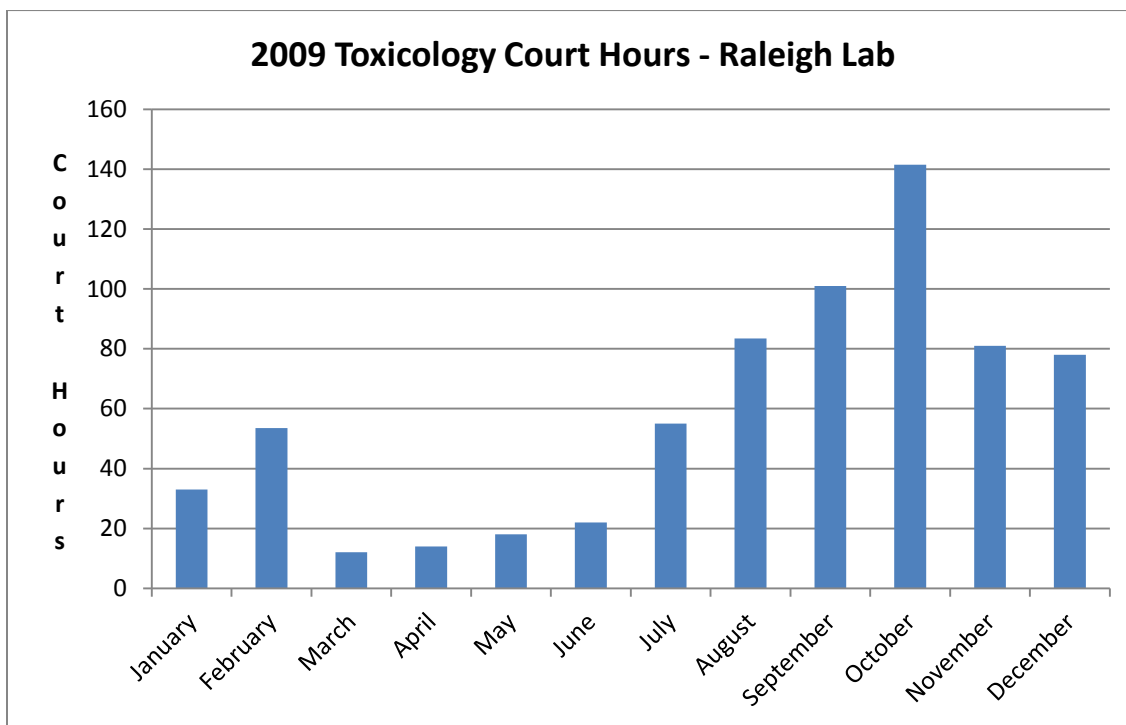
Joseph R. John, Sr.
Laboratory Director

January 17, 2012

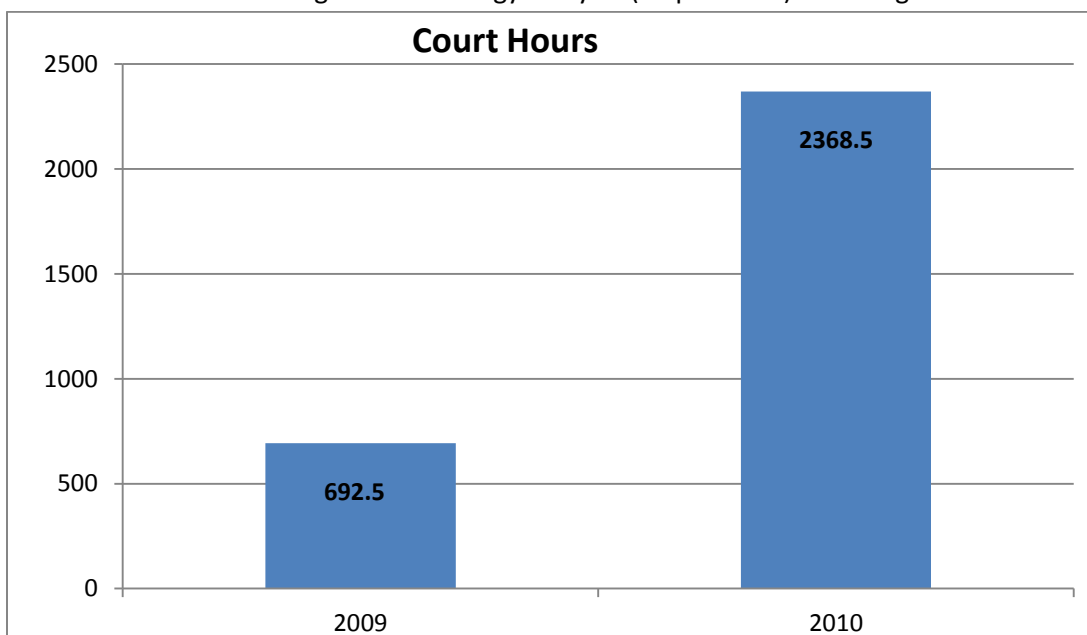


North Carolina State Bureau of Investigation Crime Laboratory Division

- *Melendez-Diaz v. Massachusetts*—June 25, 2009: Under Confrontation Clause of US Constitution, laboratory analyst affidavits reciting test results may not be admitted into evidence absent testimony of the analyst. Crime Lab staffing levels based upon use of affidavit.
- Consequences were immediate and dramatic. Blood test results of DWI defendants must be presented in person by the testing Lab scientist in *both* district and superior courts.



Total court hours for Raleigh Lab toxicology analysts (12 positions) following *Melendez-Diaz*:



- The situation is complicated by an increase in the volume of cases:

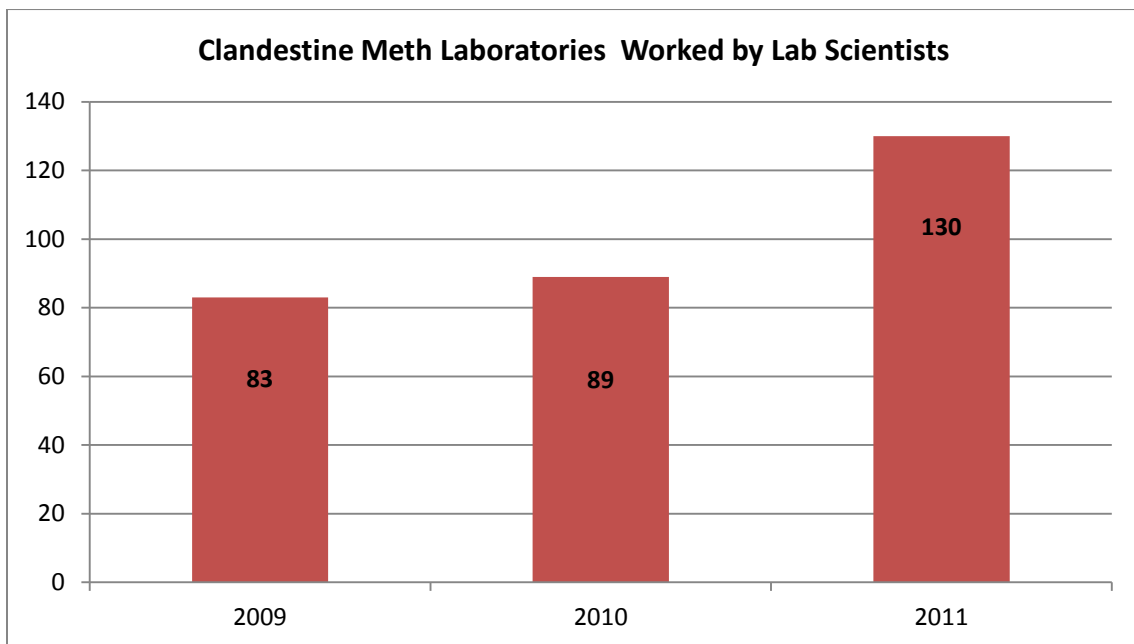
Toxicology Submissions By Region of North Carolina			
	2009	2010	2011
Western	2918	3256	2991
Central	1370	1609	1712
Eastern	3159	3357	3748
	7447	8222	8451

In addition, the number of toxicology cases requiring more complex (and time consuming) testing for both alcohol and drugs has noticeably increased:

Toxicology Submissions by Exam Type		
	2010	2011
Alcohol only*	3494	3578
Alcohol/Drug or Drug only^	4505	5221

*Approximately two hours Lab time. ^At least four hours Lab time.

- Further, Lab scientists are responding in a record number of clandestine meth lab cases:



A single clandestine meth lab case, including travel, site work (notably evidence gathering of toxic and volatile materials), laboratory analysis and testimony may involve up to 40+ hours of a Lab scientist's time.

- Crime Laboratory research:

- 1) studied other states, in particular visiting the Virginia Department of Forensic Science Laboratory (special session of Virginia legislature addressed *Melendez-Diaz* issues, resulting in statutory changes as well as new toxicology positions);
- 2) met with experts from NCSU and RTI (Research Triangle Institute) International;
- 3) consulted with legal experts at UNC School of Government.

- Possible approaches:

A) **Notice and Demand Statutes**—approved in *Melendez-Diaz*.

The General Assembly enacted S.L. 2009-473, effective Oct. 1, 2009, amending G.S. 8-58.20, G.S. 20-139.1 (c1), (c3) and (e1), and G.S. 90-95 (g) (1) (2) to provide that testing analysts' reports and chain of custody statements, following the required notice to the defendant or counsel of record and the defendant's subsequent failure to object, "may" be admitted into evidence without the personal appearance of the analyst/evidence custodian signatories. (Only G.S. 20-139 (e1), applying to the use of a chemical analyst's affidavit in district court, provides that the failure to file an objection "shall" be deemed a waiver of the right to object to the admissibility of the affidavit;

B) **"Substitute Witnesses"**— NC Crime Lab utilizes "peer review" in every case. However, use of a "substitute witness" fails to address the fundamental problem of analyst time out of the Lab and simply transfers it to another analyst. Recent federal and NC court decisions have rejected "substitute witnesses" except under extremely limited circumstances (must be "independent" decision).

C. **Remote testimony-videoconferencing**—constitutionally suspect according to Prof. Jessica Smith, UNC School of Government ("Two-Way Remote Testimony: Will It Pass Muster? Parts I-III"; February 10, 2011), www.sogweb.sog.unc.edu/blogs/ncclaw?tag=confrontation-clause); NC judges rely on the School of Government and Prof. Smith in particular, thus creating the risk of jeopardizing cases to an uncertain judicial fate if remote testimony is offered. Interestingly, Smith suggests "regional laboratories" as an "administrative option."

D. **Designated geographical (county; prosecutorial and/or judicial district) assignment of analysts**—exploring on a pilot basis; at least a year will be required to determine the utility of the system because analysts will continue to testify statewide in cases previously worked.

E. **Mandatory overtime**—in effect for at least one year; has helped some, but many hours are consumed in long distance travel assignments to far western or northeastern counties.

F. **Fund and staff a Western Regional Lab toxicology unit.** While costly (see below), this represents the best long-term solution

Estimated Costs for Western Lab Toxicology

Personnel	Rec. Salary	W/Operating Costs	Total
Six (6) Forensic Scientists	\$49,000	\$77,879	\$467,274
Equipment			\$893,000

Costs t/b/d: Laboratory Space (Western Lab facility has previously expanded and site cannot accommodate additional expansion), Maintenance Agreements, Waste Disposal, Calibration, Certification and Accreditation.